

OGC Has Reviewed

*Thorne*

Chief, C & L Branch, Finance Division

13 November 1950 ✓

Legal Staff

Public Law 830, 81st Congress

1. Reference is made to your memorandum of 30 October 1950, requesting our interpretation of certain provisions of Public Law 830. Our analysis of the sections in which you are interested follows.

2. Section 1(a) of Public Law 830 amends Public Law 600 by striking out the phrase "in the order directing the travel," and substituting the words "or approved."

a. Your interpretation: This means that whereas heretofore it was necessary that all elements of legal travel such as transportation of household goods and effects and dependents could not be paid unless authorized in advance, they can now be paid if retroactively approved by proper authority.

b. Comment: The Legal Staff believes your interpretation is substantially correct. This amendment permits reimbursement to employees for expenses of their travel, the cost of transportation of their families, and shipment of their household effects upon transfer in cases where authority to incur those expenses inadvertently may have been omitted from the original orders, or where no formal order was issued in advance. The legislative intent is that normally orders covering such expenses should be issued in advance, but Congress in passing the new law has recognized that circumstances occasionally make that impossible.

Congress enacted this particular provision because of past hardships which resulted when employees were directed by their superiors to transfer from one permanent duty station to another only to find that the expenses necessarily incurred by them in effecting the change of station could not be reimbursed because no authorization for incurring such expenses had been issued prior to the performance of the travel. Congress also took into consideration the fact that in many cases the failure to issue proper and complete orders resulted from emergency situations, and the new law protects the transferred employee in such instances. Consequently, it is our view that orders covering such travel expenses should be issued in advance whenever possible, and that the new provision should be used only when circumstances prevent a prior issuance, or

when there is an emergency situation, or when other extenuating circumstances exist.

3. Section 1(b) of Public Law 830 amends subsection (a) of Public Law 600.

a. Your interpretation: This amendment is made to enable employees stationed at a point in the United States to receive payment for movement of families and effects from actual place of residence, although it may be different from their stations, and allow the same type of privileges now authorized for new appointees in connection with movement of dependents and effects.

b. Comment: The Legal Staff believes your interpretation is substantially correct, as far as it goes. This provision was intended to place Government employees who TRANSFER to points outside the continental United States in the same relative position (so far as travel and transportation expenses are concerned) as persons INITIALLY APPOINTED for duty outside the United States.

However, the new provision also subjects these employees to the same limitations as new appointees. Heretofore, a Government employee transferred for duty outside the continental United States was not required to remain in Government service for any particular period after his transfer in order to avoid being liable for the expenses of his transfer. Therefore, this section provides that incumbent employees transferred for duty abroad, as well as new employees recruited for such duty will be indebted to the United States for any moneys expended by the Government on account of the transfer in the event they fail to complete their agreed periods of service. (We feel certain you were aware of this, but believed it advisable to include this paragraph for the record).

4. Section 1(c) of Public Law 830 amends Public Law 600 to permit evacuation of families and effects from danger zones.

a. Your interpretation: The authority here given parallels that already contained in the Foreign Service Regulations.

b. Comment: It is true that the Foreign Service Act of 1946 (Public Law 724, 79th Cong.) has a similar provision which is also set out in the Foreign Service Regulations. The published material regarding the legislative history of Public Law 830 affords no indication as to the source of the language used in this section. However, we have been informed by the General Counsel of the House of Representatives Committee on Expenditures in the Executive Departments that the provision is an

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outgrowth of a War Department statute of 5 June 1942 (56 Stat. 761; 50 U.S.C.A. App. 762-776). As finally approved, the new proviso represents a combination of the aforementioned statute and recommendations of various agencies and members of Congress. As such, this section and the Foreign Service Regulations are similar but not identical. Should you have any specific questions concerning the interpretation of this section, we shall be happy to assist you.

5. Section 2 of Public Law 830 amends Section 7 of Public Law 600. Previously, under Section 7, a person newly appointed for duty outside the continental United States was required to agree in writing to remain in Government service for an agreed period of at least twelve months following his appointment, unless separated for reasons beyond his control, before the outgoing expenses of transporting himself, his immediate family, and household and personal effects could be allowed. Under the new provision, the Government's assumption of the return expenses of transportation is dependent upon the employee's serving of an agreed period of not less than one year and not more than three years, as prescribed in advance by the head of the agency, unless separation is for reasons beyond the control of the individual and acceptable to the agency concerned.

a. Your interpretation: Your memorandum has mentioned the following possible interpretations:

(1) Employees have a legal right to resign and return to the United States at Government expense after one year of duty, even though the contract specifies a two-year tour of duty.

(2) Employees may be required to serve the tour of duty specified in their contracts and may be required to refund the cost of return transportation if they resign before the end of their scheduled tour, but the agency may, at its discretion, determine that the cost of return travel is chargeable to official expense and not require the individual to bear the cost as a personal expense.

b. Comment: The Legal Staff believes that interpretation (1) above is incorrect in view of the principles of contract law and statutory interpretation and because of decisions of the Comptroller General. A factual situation sufficiently analogous for our purposes is explained in a decision set forth in 27 Comp. Gen. 70. An employee had agreed to remain in the Philippines for two years or to pay the cost of his return transportation. At the same time, Section 7 of Public Law 600 provided for a minimum of service period of only twelve months. The Comptroller General ruled that the employee was bound by the terms of his

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contract, stating that "the administrative authority to authorize return travel and transportation at Government expense terminates upon the failure of the employee to fulfill the conditions of the employment agreement respecting the length of service at his foreign duty station. Hence, so far as concerns the return of the employee or his immediate family to the United States, no administrative action with respect to the payment therefor, or the advance of funds to defray such expenses, is either required or authorized." Consequently, if an employee violates the terms of his contract he forfeits his right to return transportation expenses.

The Legal Staff also believes interpretation (2) is incorrect. Under this section a new appointee whose transportation expenses abroad are paid by the Government would be indebted to the United States for any moneys expended by the Government for such transportation if he failed to carry out the agreement. This applies to travel to the post of duty outside the continental United States. This provision gives the Government a "club" to encourage employees to respect their contractual obligations. (It is not a new concept as regards NEW appointees; it was in Public Law 600 as originally enacted. As pointed out previously, Section 1(b) of Public Law 830 has an identical "club" provision for Government employees who TRANSFER to positions outside the continental United States, and as regards such employees the "club" is new.

Some additional comments are pertinent concerning the following words from Section 2 of Public Law 830:

" . . . Expenses of return travel and transportation upon separation from the service shall be allowed whether such separation is for the purposes of the Government or for personal convenience, but shall not be allowed unless such persons . . . shall have served for a minimum period of not less than one nor more than three years prescribed in advance by the head of the department or agency concerned or unless separation is for reasons beyond the control of the individual and acceptable to the department or agency concerned."

While the above quotation gives the agency concerned a certain amount of discretion, the Legal Staff believes that this discretion should be utilized only if it furthers the interests of the Government. In other words, if an employee has agreed to serve overseas for a period of two years, and at the end of six months the agency desires to bring him back to the United States at Government expense, we believe the agency



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can do so if it furthers the interest of the Government. There are instances in which an employee could be returned to the United States at Government expense, prior to the expiration of his contract of service, when the best interests of the Government would be served. For example, an employee whose services no longer are required outside the United States, and whose services no longer may be utilized. See Comp. Gen. 202. See also 27 Comp. Gen. 329, holding that the return of an employee for retirement purposes was proper.

One of the best explanations of this problem is found in 26 Comp. Gen. 488, at 495. There the Comptroller General said it was permissible for an agency to furnish transportation costs to employees who were to remain overseas less than the twelve months' period mentioned in the statute since it was in the interest of the United States to do so. An administrative determination that a full twelve-month tour of duty would not be required may be made subsequent or prior to the appointment, according to this decision, provided such a determination is made in the interest of the Government.

A final comment on this section concerns the words "or unless separation is for reasons beyond the control of the individual and acceptable to the department or agency concerned." The underlined clause was inserted at the request of the Department of the Army, on the theory that alcoholics and dope fiends could claim their respective conditions were "beyond the control of the individual," and hence would expect return transportation. However, the agency concerned could refuse to consider such a reason "acceptable" and hence could deny travel expenses.

25X1A 6. The purpose of Section 8 of Public Law 630 is to eliminate the requirement for a specific authorization in appropriation items for the expenditure of funds for employee health service programs. Such programs are conducted pursuant to Public Law 658, which requires that the programs be conducted "within the limits of appropriations made available therefor." [redacted] has informed the undersigned that CIA has such a health program. Consequently, this section has some effect upon our Agency, although it is rather limited. The sole effect of this section will be to make it unnecessary for Congress to mention this item specifically in most appropriation bills.

7. The purpose of Section 9 of Public Law 630 is to eliminate the requirement for a specific authorization in appropriation acts for payment of tort claims. Under the provisions of 28 U.S.C. 2672, heads of departments and agencies are authorized to settle claims for damages of \$1,000 or less against the United States for personal or property injuries caused by the negligence of Government employees acting within the scope of their employment. That law permitted payments of such claims only out of appropriations made therefor.

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Consequently, this action will have only a small effect upon CIA.

B. We trust the above analysis is sufficient for your purposes, but do not hesitate to notify the Legal Staff if you require further assistance.

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